

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Victor B. Perkins

Civil No. 09-3735 (PAM/FLN)

Plaintiff,

v.

ORDER

Dr. Dianne Hart,
Dr. Orlando Maldonado,

Defendants.

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Franklin L. Noel dated January 13, 2010. Plaintiff Victor B. Perkins is a former federal prison inmate. From 2006 to 2009, Perkins was confined at the Federal Medical Center in Rochester (“FMC-Rochester”). In this matter, Perkins is attempting to sue two doctors he alleges were employed at FMC-Rochester while he was confined there. Perkins alleges that the two doctors committed medical malpractice and negligence by prescribing and administering “dangerous and psychotropic medications” which had a series of negative effects on him.

Magistrate Judge Noel recommends that both Perkins’s application to proceed in forma pauperis (“IFP”) and his underlying action be dismissed. The R&R explains that Perkins has failed to state a viable case because (1) Perkins’s exclusive legal remedy for the wrongs alleged is under the Federal Tort Claims Act, a claim which he has not alleged, and (2) Perkins has failed to properly plead a medical malpractice claim under the requirements

Minn. Stat. § 145.682.

The parties had until January 27, 2010, to submit any objections the R&R. Because no objections have been filed, the Court **ADOPTS** the R&R (Docket No. 3).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Application to Proceed with Prepayment of Fees (Docket No. 2) is **DENIED**; and
4. This action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: Wednesday, February 3, 2010

s/ Paul A. Magnuson

Paul A. Magnuson

United States District Court Judge